IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.367 OF 2007

Pradyuman Kumar Sharma ...Petitioner

vs.

Jaysagar Madanlal Sancheti & Ors. ...Respondents

Mr.J.A.Udaipuri for the Petitioner
Mr.C.J.Sawant, Senior Counsel with Mr.K.J.Hakani i/b
Mr.P.V.Nelson Rajan and Mr.Rahul Hakani for the Respondents

CORAM: A.S.OKA,J.
DATE : OCTOBER 8,2007

P.C.:

1. I have heard the submissions of the learned counsel for the parties. This petition has been filed by the petitioner by invoking sub sections 1 and 2 of section 14 of the Arbitration and Conciliation Act,1996 (hereinafter referred to said Act).

2. The prayer in the petition is for issuing directions against the Respondents for forging and fabricating the documents/agreement dated 10th July 2000 and for using the said forged and fabricated documents in the judicial process before this court. The second prayer is for terminating the mandate of the learned sole Arbitrator by invoking the provisions of 14(2) of the said Act. The third prayer is for restraining the learned Arbitrator from proceeding with the arbitration.

3. The first submission of the learned counsel for the

petitioner is that in view of the provisions of the said Act and especially section 16, the learned Arbitrator is duty bound to decide issues No.2 and 3 as preliminary issues. He submitted that the preliminary issues will go to the root of the matter. He submitted that as the learned Arbitrator has failed to decide the two issues as preliminary issues, it is obvious that he is unable to perform his functions. He submitted that the learned Arbitrator is charging exorbitant fees and he is interested in profiteering. He pointed out the quantum of fees paid by the petitioner to the learned Arbitrator and submitted that there is a monetory bias on the part of the learned Arbitrator. He submitted that as the Arbitrator is delaying the proceedings, the Petitioner is required to pay heavy fees. He has placed reliance on the decision of the learned Single Judge of this Court in case of Hasmukhlal H. Doshi and another vs.Justice M.L.Pendse and others. He submitted that the learned Arbitrator stands to gain pecuniary benefits from prolonged continuation of proceedings and therefore, the decision on the preliminary issue is being deferred. He, therefore, submitted that in view of the aforesaid conduct on the part of the learned Arbitrator, his mandate is required to be determined. The learned Senior Counsel for the Respondents has invited my attention to the various orders passed by the learned Arbitrator. He relied upon the order dated 24th July 2007 passed by the learned Sole Arbitrator.

4. I have considered the submissions of the learned counsel for the parties. Issue Nos.2 and 3 which are formulated the learned Arbitrator for determination read thus :

2. Whether the Arbitration proceedings are not maintainable for non production of original agreement dated 10th July 2000?

3. If so, whether the proceedings are liable to be dismissed as threshold ?"

5. It is an admitted position before me that the parties have led evidence on all issues before the learned Arbitrator and thereafter, the submissions of the claimants (Respondents herein) on the issues have been heard by the learned Arbitrator. Now the proceeding is pending for hearing of the arguments of the Petitioner.

6. On an application made by the Petitioner for deciding the issue of validity of the agreement dated 10th July 2000 as a preliminary issue, the learned Arbitrator in paragraph 16 of the order dated 24th July 2007 has observed as under :

"16. It is correct that the Arbitrator has to decide the issue as to the existence of the arbitration agreement and/or validity of the agreement first before going into the merits of the submissions of the parties. However, it is

not necessary to decide the issue of existence of the arbitration agreement and/or validity of the agreement in all cases as a preliminary issue at a stage where evidence is concluded and arguments of the Claimants are over and submissions on behalf of the Respondent are to be heard. **In the instance case, issues have been framed and one of the issue is about the validity of the agreement between the parties. There is no doubt about the fact that the said issue has to be decided before proceeding to finally pronounce the award..."**

(Emphasis supplied).

7. After making aforesaid observation, the learned Arbitrator referred to the decision of the Apex Court in case of Maharshi Dayanand University Vs. Anand Coop Society Ltd. and observed that this was not the stage to decide any issue as a preliminary issue. Thereafter, in paragraph 17 of the said order the learned Arbitrator has proceeded to observe as under:

"17. Law is thus abundantly clear that the issue regarding the existence and/or validity of the agreement has to be decided by the Arbitrator before finally deciding the matter. **In the instant case, a specific issue has been framed in that regard and the Claimants have already made their submissions on all the issues including the said issue and after hearing the submissions of the**

Respondent, obviously the said issue will be decided first before proceeding to finally pronounce the award. It is again made clear to the Respondent that the said issue will be decided first in the present case also before pronouncing the award. However, there is no question of treating the same as a preliminary issue more so in view of the order of the Arbitrator made three years back by the consent of the parties and at this stage when not only evidence is closed, but the arguments of the Claimants are over on all issues including the above issue and submissions on behalf of the Respondent are only to be heard."

8. Thus, the learned Arbitrator has made it very clear that the aforesaid two issues will be decided before pronouncement of the award. It must be noted here that the evidence has been led by the parties on all issues and submissions of the Advocate for the Respondent have been already heard by the learned Arbitrator.

9. As regards other submissions, it must be stated that the schedule of the fees was fixed by the learned Arbitrator. The said schedule was accepted by the parties. Now, at this stage, a grievance cannot be made that the petitioner is required to pay fees and charges as per the said schedule to the learned Arbitrator.

10. The submission of the learned counsel for the petitioner is that the aforesaid two issues will have to be decided before final award is made and that is precisely the learned Arbitrator proposes to do as indicated in aforesaid order. This is a case where the parties have led evidence on all issues. Therefore, the submission of the learned counsel for the petitioner that the learned Arbitrator is delaying the proceeding for pecuniary gain cannot be accepted as a ground for establishing the case under sub section 1 of section 14 of the said Act. There is no material to establish pecuniary bias or impropriety on the part of the learned Arbitrator.

11. A submission is also made that heavy costs have been awarded by the learned Arbitrator. That itself is no ground to terminate the mandate by exercising the power under sub section 2 of sections 14 of the said Act.

12. In my view, no case is made out for terminating the mandate of the learned Arbitrator. There is no merit in the petition and the same is accordingly rejected.

13. The learned counsel for the respondents prays for costs. Considering the facts and circumstances of the case, the parties are left to bear their respective costs.

JUDGE